

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----x  
LEONIS FRANKLIN,Docket No. 07 CV 8590  
(RS/DF)

Plaintiff,

ECF case

-against-

FUJITEC SERGE OF NY and "JOHN DOE",  
A FICTITIOUS NAME FOR A FOREMAN  
EMPLOYED BY FUJITEC SERGE OF NY,AMENDED ANSWER TO  
AMENDED COMPLAINT

Defendants.

Defendants demand  
a Trial by Jury

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Defendants, FUJITEC AMERICA, INC., incorrectly sued herein as above ("FAI"), and Patrick Dineen ("DINEEN"), incorrectly named herein as "JOHN DOE", by their attorneys, Swartz Law Offices, as and for their answer to the plaintiff's Amended Complaint, upon information and belief, respectfully allege as follows:

AS TO THE FIRST CAUSE OF ACTION

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 and 5 of the amended complaint.
2. Deny the allegations contained in paragraph 2 of the amended complaint in the form alleged, except admit that defendant Fujitec America, Inc., incorrectly sued herein as Fujitec Serge of NY, was a foreign corporation, and refer all questions of law to this Honorable Court.

3. Deny the allegations contained in paragraph 3 of the amended complaint in the form alleged, except admit that defendant FAI was doing business in the State of New York, and refer all questions of law to this Honorable Court.

4. Deny the allegations contained in paragraph 4 of the amended complaint in the form alleged, except admit that until some time last year defendant FAI had a place for the transaction of business located at 1 Donna Drive, Wood-Ridge, New Jersey 07075.

5. Deny the allegations contained in paragraph 6 of the amended complaint in the form alleged, except admit that on the date alleged the defendant foreman was present at the New York Times building.

6. Deny each and every allegation contained in paragraphs 7, 8, 9 and 10 of the amended complaint.

AS TO THE SECOND CAUSE OF ACTION

7. In answer to paragraph 11, answering defendants repeat and reallege each and every response heretofore made with respect to paragraphs 1 through 10 of the amended complaint as though fully set forth herein.

8. Deny each and every allegation contained in paragraph 12 and 13 of the amended complaint.

AS FOR A FIRST AFFIRMATIVE DEFENSE  
ANSWERING DEFENDANTS ALLEGE:

9. That the injuries of the plaintiff were caused in whole or in part by the culpable conduct of the plaintiff, which either bars the claims completely or else diminishes

the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries of the plaintiff.

AS FOR A SECOND AFFIRMATIVE DEFENSE  
ANSWERING DEFENDANTS ALLEGE:

10. That any recovery herein by the plaintiff for economic loss, either past or future, is subject to reduction pursuant to CPLR §4545(c), to the extent that such losses are subject to replacement or indemnity from collateral sources.

AS FOR A THIRD AFFIRMATIVE DEFENSE,  
ANSWERING DEFENDANTS ALLEGE:

11. That any judgment to be entered herein in favor of the plaintiff is subject to adjustment pursuant to Article 50-B of the CPLR to whatever extent such article might be applicable.

AS FOR A FOURTH AFFIRMATIVE DEFENSE,  
ANSWERING DEFENDANTS ALLEGE:

12. That, upon information and belief, plaintiff failed to mitigate his damages.

AS FOR A FIFTH AFFIRMATIVE DEFENSE,  
ANSWERING DEFENDANTS ALLEGE:

13. The claims of the plaintiff alleged in the amended complaint are time-barred under the applicable one-year statute of limitations, as the alleged claim accrued on July 11, 2006, and the action was not timely commenced as against the defendants.

TRIAL BY JURY

14. Answering defendants demand a trial by jury.

WHEREFORE, answering defendants demand judgment dismissing the plaintiff's amended complaint, together with the costs and disbursements of this action, including reasonable attorneys' fees.

Dated: New York, N. Y.  
June 12, 2008

To:

Steven Siegel, Esq.  
STEVEN SIEGEL, P. C.  
Attorneys for plaintiff  
123-12 82<sup>ND</sup> Avenue  
Kew Gardens, N. Y. 11415

/S/

GERALD NEAL SWARTZ (GNS-1389)  
SWARTZ LAW OFFICES

Attys for defts. Fujitec America, Inc.,  
incorrectly sued herein as above and  
Patrick Dineen, incorrectly named herein  
as "John Doe"

475 Park Avenue South, 27<sup>TH</sup> floor  
New York, N.Y. 10016  
Tel. (212) 725-7070

Tel. 718-520-0413

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LEONIS FRANKLIN,

Docket No. 07 CV 8590  
RJS/DF

Plaintiff,

ECF

FUJITEC SERGE OF NY and "JOHN DOE",  
A FICTITIOUS NAME FOR A FOREMAN  
EMPLOYED BY FUJITEC SERGE OF NY.

## AFFIDAVIT OF SERVICE

## Defendants

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

MANUEL AYRES, being duly sworn, deposes and says: I am not a party to this action, am over 18 years of age, and reside in Springfield, N. J.

That on June 12, 2008 deponent served the within  
AMENDED ANSWER TO AMENDED COMPLAINT

upon:

Steven Siegel, Esq.  
STEVEN SIEGEL, P. C.  
Attorneys for plaintiff  
123-12 82<sup>ND</sup> Avenue  
Kew Gardens, N. Y. 11415

Tel. 718-520-0413

by depositing a true copy of same enclosed in a postage paid envelope addressed to said counsel at said address, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

/S/

## MANUEL AYRES

Sworn to before me, this  
12<sup>TH</sup> day of June, 2008

/S/

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Gerald Neal Swartz  
Notary Public, State of New York  
No. 02 SW 4685686  
Qualified in Westchester County  
Commission Expires April 30, 2010

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Plaintiff,

-against-

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Defendants.

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**AMENDED ANSWER TO AMENDED COMPLAINT**

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**SWARTZ LAW OFFICES**

Attys for defts Fujitec America, Inc., s/h/a  
and Patrick Dineen s/h/a John Doe  
Office and Post Office Address:  
475 Park Avenue South, 27<sup>TH</sup> Floor  
New York, N. Y. 10016  
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